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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1937

No. 199

THE UNITED STATES OF AMERICA, PETITIONER

vs.

BEN B. JACKSON, BY HIS GUARDIAN AD LITEM, ALPHENE W. DOWELL

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR CERTIORARI FILED JULY 7, 1937
CERTIORARI GRANTED OCTOBER 11, 1937

26861—37

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TRANSCRIPT OF RECORD

CAPTION.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF SOUTH CAROLINA.
AT LAW.

At a District Court of the United States for the Eastern District of South Carolina, begun and held at the Court House in the City of Charleston, S. C., on the third Monday in January, being the twentieth day of the same month, in the year of our Lord one thousand nine hundred and thirty-six.

Present: Honorable Frank K. Myers, United States District Judge for the Eastern District of South Carolina.

Among other were the following proceedings:

COMPLAINT.

(2) Filed October 14, 1935.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF SOUTH CAROLINA.

Ben B. Jackson, by his Guardian Alphene W. Dowell, Plaintiff,

vs.

The United States of America, Defendant.

The plaintiff respectfully shows to the Court and alleges:

1. That heretofore, to-wit: on the 27th day of April, 1918, Jake Jackson of Jasper County, South Carolina, the father of Ben B. Jackson, a minor, was drafted in the Army of the United States and served in said army until he died on the 11th day of May, 1918.

2. Plaintiff further alleges that at the time of the death of Jake Jackson on the 11th day of May, 1918, he had only one child, to-wit: Ben B. Jackson, who was born on the 10th day of August, 1917, in Jasper County, South Carolina.

3. That on the 29th day of June, 1935, Alphene W. Dowell was duly appointed Guardian for the said Ben B. Jackson by the Probate Court of Jasper County, State of South Carolina, and is now engaged in the discharge of his duties as such, said appointment and jurisdiction being within the Eastern District of the said State.

4. Plaintiff further alleges that One Hundred, Twenty (120) days had not yet expired between the date of entrance in the United States Army by the said Jake Jackson and the date of his death, and that on account of the death of the said Jake Jackson, his son, Ben B. Jackson, is entitled to automatic insurance according to (3) the Acts of Congress, and regulations pertaining thereto, in the sum of Twenty Five ($25.00) Dollars per month from the date of death of the said veteran until Two Hundred, Forty (240) installments of said automatic insurance has been paid.

5. Plaintiff is informed and believes that on account of the matters hereinabove stated that the United States of America is due and owing to him the sum of Twenty Five ($25.00) Dollars per month from the 11th day of May, 1918, the date of death of said veteran, to date, no part of which has been paid and an additional payment of Twenty Five ($25.00) Dollars per month until Two Hundred, Forty (240) installments have been paid in accordance with the terms of contract of automatic war risk insurance, and regulations pertaining thereto.

6. That a disagreement exists between the plaintiff and the Veterans Administration as to payment of said contract of automatic war risk insurance.

7. That the Veterans Administration having declined to pay plaintiff's claim, it became necessary for him to employ attorneys to bring this action for the collection of said claim, and said attorneys are entitled to a reasonable fee for their services.

Wherefore: Plaintiff prays judgment against the United States of America.

First, for the sum of Twenty Five ($25.00) Dollars per month to the plaintiff from the 11th day of May, 1918, to date.

Second, for adjudication of his right to future payments of Twenty-Five ($25.00) Dollars per month according with the terms of said contract of automatic war risk insurance until Two Hundred, Forty (240) installments have been paid.

Third, for a reasonable fee to be fixed for attorneys for the prosecution of this action.

(4) Fourth, for the costs of this action, and for such other and further relief as this court may deem just in the premises.

R. K. WISE,
ANDERSON G. ULMER,
Attorneys for Plaintiff.

(Complaint verified.)

ANSWER.

(5) ● Filed Nov. 26, 1935.

The defendant, answering the complaint herein, respectfully shows to the Court:

FOR A FIRST DEFENSE.

1. That it denies each and every allegation of the complaint not hereinafter specifically admitted, explained or modified.

2. That the defendant has not sufficient information to form a belief as to the truth of the allegations of Paragraph 3 of the complaint herein.

3. The defendant admits so much of the complaint as alleges that Jake Jackson was drafted into the United

States Army on April 27, 1918, and that he died on May 11, 1918, without having applied for War Risk Insurance, and the defendant specifically denies Ben B. Jackson is a child of the said Jake Jackson, deceased, and therefore defendant alleges that insurance is not payable, as alleged in said complaint.

FOR A SECOND DEFENSE.

The defendant respectfully shows to the Court that suit was not brought in this case within the time prescribed by law and the same is therefore barred by the limitations contained within the Acts of Congress relative to War Risk and automatic insurance.

(6) Wherefore, the defendant demands that the complaint be dismissed with costs.

CLAUD N. SAPP,
United States Attorney.
ROBERT E. WILSON,
Attorney, Dept. of Justice.
Attorneys for defendant.

November 20, 1935.

(Answer verified.)

ORDER OF JUDGMENT.

(7) Filed July 3, 1936.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF SOUTH CAROLINA.

Ben B. Jackson, by his Guardian, Alphene W. Dowell, Plaintiff,

vs.

The United States of America, Defendant.

This cause came on regularly to be heard on January 29, 1936; Anderson G. Ulmer and R. K. Wise appearing for the plaintiff; Honorable S. H. Edmunds, Assistant United States Attorney for the Eastern District of South Carolina, and Robert E. Wilson, Esq., Attorney for the

Department of Justice, attorneys for defendant; that a jury of twelve persons was regularly impaneled and sworn to try the said cause. Witnesses on the part of plaintiff and defendant were sworn and examined with reference to the action herein upon a suit on automatic war risk insurance on the life of Jake Jackson, a soldier of the World War, providing that in the event of death before application for insurance was filed, and that said death occurred within One Hundred, Twenty (120) days after entrance into service that the defendant would pay to a permitted class the sum of Twenty Five ($25.00) Dollars per month, until Two Hundred, Forty (240) installments had been made; that after hearing the evidence and the instructions of the Court the jury retired to consider of their verdict, and subsequently returned into Court their verdict in words and figures as follows, to-wit:

"We the Jury find for the plaintiff.

"Dated: January 29, 1936.

(s) C. M. THOMPSON, Foreman."

(8) And the Court having fixed plaintiff's attorneys' fees in the amount of ten per centum of the insurance sued upon and involved in this action. Therefore, on motion of R. K. Wise, attorney for paintiff:

IT IS ORDERED, ADJUDGED, AND DECREED that Ben B. Jackson, the plaintiff, have judgment against the defendant and to have and recover of the United States of America, the defendant, installments of the insurance sued upon in the sum of Twenty Five ($25.00) Dollars per month beginning May 11, 1918, up to and including January 11, 1936, the monthly anniversary date immediately *preceeding* the trial of said cause of action.

AND IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the defendant, The United States of America, deduct Ten per centum (10%) of the amount of insurance sued upon and involved in this action and pay the same to Anderson G. Ulmer and R. K. Wise, plaintiff's attorneys, for their services rendered before this court, payable at the rate of one-tenth (1/10th) of

all back payments and one-tenth (1/10) of all future payments which may hereafter become due on account of said insurance, said fee to be divided as follows: Five (5%) per cent to Anderson G. Ulmer, Savannah, Georgia, and Five (5%) per cent to R. K. Wise, Columbia, South Carolina, said amounts to be paid by the defendant to the said Anderson G. Ulmer and R. K. Wise out of any payments to be made to Alphene W. Dowell, Guardian of Ben B. Jackson, his successors or assigns.

FRANK K. MYERS,
United States District Judge.

July 3, 1936.

Approved as to Form.

CLAUD N. SAPP,
United States Attorney,
For the Defendant.
By ROBERT E. WILSON,
Attorney representing
Department of Justice.

BILL OF EXCEPTIONS.

(9) Filed July 20, 1936.

Be it remembered that at a stated term of the United States Court held at Charleston, South Carolina, on the 29th day of January, in the year of our Lord one thousand nine hundred and thirty-six, the above entitled case came on to be heard, at which time the Plaintiff appeared by his counsel, R. K. Wise, Esq., and A. W. Dowell, Esq., and the Defendant by its counsel, S. Henry Edmunds, Jr., Esq., Assistant United States Attorney, and Robert E. Wilson, Esq., Attorney of the Department of Justice. A jury was duly empanelled and the following proceedings then were had:

The Complaint and Answer were read. Defendant's counsel moved that the witnesses be segregated and examined separately. Motion granted. Ruling also applied to Government's witnesses.

Thereupon the Plaintiff, to sustain the issues upon his part, offered the following evidence, to-wit: A. W.
(10) DOWELL was called by counsel for the plaintiff, and being duly sworn, testified:

DIRECT EXAMINATION.

By A. W. DOWELL:

I practice law in Savannah, Georgia. I am a member of the Savannah Bar. It appears from the record in this case that I was appointed guardian of Ben Jackson in 1932 by the Probate Court. That is the Court of Ordinary, which corresponds to the Probate Court of South Carolina. While I was acting in a capacity of guardian in that court, I interceded in behalf of the minor child in regard to the automatic insurance. Every form requested by the Veterans Administration was furnished. I was then assured upon some $6,000.00 with the American Surety Company and sent that to the Government in 1932. I never received this money. If I might be allowed to state why I didn't receive the money, the reason for their declining payment of it. I had letters—

The COURT: You declined to receive or pay it? A. No, sir. I first received notice of the award by letters from the government, stating it was 240 monthly installments due my ward, and requesting that I furnish affidavits and surety bond. I complied with that, and it was held up for some little time. The next thing I received from the Government was a letter stating that under the Act of March 1st, 1933, just to close my files on it, that that Act passed had wiped out all claims that hadn't been paid or litigation hadn't been started in court up to that time. I closed my files on it until I read in the papers of the Supreme Court decision. I don't recall the exact decision which held that the automatic insurance which was due my ward did not come
(11) under the heading of war risk insurance, that it was not a gratuity but was the same as war risk insurance, and the act didn't affect it. I then made demand to the Veterans Administration again, and they stated that the administration apparently from their investigation should not have been in Chatham County but should have been in Jasper County, South Carolina. After

some considerable delay, I then obtained letters of guardianship in Jasper County.

That is where the child lives. I sent the guardianship papers to Washington then. They declined payment. There were several features to the case. I received several letters, but this is the final letter denying the claim. The date of this letter is September 4th, 1935. I took that letter to mean that they were not going to pay me. On October 14th I filed suit as guardian in this court. I think that date is correct. After I received that last letter this is all the correspondence that I have had in reference to it. I have just taken it out of my file.

(Letter file offered in evidence and marked Plaintiff's Exhibit No. 1.)

I had a hearing in the Probate Court in Jasper County. That hearing was on July 22nd, 1935. I had witnesses there to give testimony. I had relatives of the family. At this hearing these witnesses were sworn in by the Probate Judge, Judge McCormick, and examined: Tom Polite, Maria Drake, Mary Clarke, Millie Battice, Minus Wright, and James Chisholm. And this is what Judge McCormick found after hearing these witnesses—

(12) *The Court: That is not competent.*

Q. You took these witnesses over? A. Yes.

CROSS EXAMINATION.

By Mr. WILSON:

Q. Mr. Dowell, you were appointed by the Probate Court of Jasper County as guardian for this boy on the 29th day of June 1935? I believe that is the date. A. That is what Judge McCormick gave me.

Mr. WILSON: I would like to offer in evidence letters of guardianship, showing that June 29th, 1935, as the date of apopintment.

(Letters of guardianship received in evidence and marked Exhibit 2 by Defendant.)

Q. Now, Mr. Dowell, the war risk insurance act as amended on July 3rd, 1930, and which is the act under which these suits are now brought, provided that a claim is a writing which alleges permanent total disability at a time the contract was in force. (Showing witness letter.) When you use these words, showing an intention to claim the benefits, the insurance benefits. Now, sir, since your appointment, what letter have you written them demanding the payment of this insurance? A. I wrote them sending them the certified copy.

Q. What demand in writng have you made since your appointment as guardian? A. I would like to answer that question in this manner: The original claim was filed in 1932 under an appointment—not under this later appointment in Ridgeland, South Carolina, but over in Chatham County.

Q. Which was a void appointment. A. It was never thrashed out. I just tried to comply with the require-
(13) ments of the Veterans Administration. They said administration should have been had in Jasper County, South Carolina, and I therefore applied for letters in Jasper County.

Q. You don't appear here as guardian in Chatham County? A. The Veterans Administration wanted it in Jasper County.

Q. You don't claim any rights in this court under the appointment in Chatham County? A. No, sir.

Q. If you are claiming rights under this appointment in Jasper County, I want to know where is your demand since you were appointed in Jasper County? A. Under date of October 26th, 1932.

Q. That is before. That is prior to your appointment, and I object to that.

The COURT: Have you made any written demand for the payment of this insurance since your appointment as guardian by the Probate Court of Jasper County? I don't intimate that that stops this suit, but that is the question asked you.

Q. Under date of July 24th, 1935. This is a letter that I wrote. I will read this.

"Veterans Administration, Washington, D. C. *In re*: Jake Jackson, XC 16-485. Gentlemen: With fur-

ther reference to correspondence of December 4th, 1933, and March 22nd, 1934, having reference to claims for automatic insurance and death benefits filed by me as Guardian of Ben B. Jackson, wherein you advised that my previous appointment as guardian of this child and the order of the Ordinary of Chatham County, establishing the veteran Jake Jackson as the putative father of the minor Ben B. Jackson were void because the minor Ben B. Jackson was a resident of Jasper County, South Carolina, and the Ordinary of Chatham County was, therefore, without jurisdiction in said matters, beg to hand you herewith certificate of guardianship issued to me by the Probate Judge of Jasper County, South Carolina, and certified copy of Order and Decree (14) of the Judge of Probate of Jasper County, South Carolina, establishing the said veteran Jake Jackson to be the putative father of my said minor ward, Ben B. Jackson. As you will notice a purely nominal guardianship bond in the sum of $100.00 has been given in this case, but upon advice of any award made in favor of the said Ben B. Jackson, bond with recognized surety company in the sum sufficient to meet all legal requirements will be given. From previous correspondence with the administration it appears that an award was made in the matter of the automatic insurance and that the reason for holding this up was the question of jurisdiction. Since the contention of the Administration has been that the courts of South Carolina had jurisdiction in this matter, and since the proceedings herewith referred to have been had in the Probate Court of Jasper County, South Carolina, where the said Ben B. Jackson was born, has resided most of the time, and is now living, I request that these claims be given consideration in the light of the enclosures, and that if it is necessary that official blanks in support of these claims be executed by me at this time, that same be forwarded for execution. Trusting that these matters will have your prompt attention, I am Yours very truly, Alphene W. Dowell, Guardian of Ben B. Jackson, Minor."

I received a reply to that letter. In rely to that I received this letter:

(Reading) "Dear Sir: Receipt is acknowledged of your communication dated July 24th, 1935, enclosing

certified copy of the order of the Probate Court of Jasper County, South Carolina, dated July 22nd, 1935, declaring Jake Jackson, the above named veteran to be the putative father of Ben B. Jackson, minor, also certified copy of letters of guardianship in the matter of your appointment as legal guardian of Ben B. Jackson, issued by the Probate Court of Jasper County under date of June 29th, 1935. Please be advised that your claim for automatic insurance as legal guardian of the above named minor is receiving the attention of this office, and you will be further informed with reference to this claim in due course of business."

There is another supplement under date of September 4th, 1935, which states:

"Supplementing letter from this office addressed to you under date of August 1st, 1935, you are advised that decision has been rendered in this case that Grace Beeton is not the common law wife of Jake Jackson, and that Order entered by the Probate Court of Jasper County, South Carolina, decreeing Jake Jackson the putative father of Ben B. Jackson, is entitled to no weight in the adjudication of this case due to the fact that a judgment decreeing the putative father of the children must be entered during the lifetime of the putative father. (15) Furthermore, that the action to establish paternity of an illigitimate child is essentially an action *in personam* and not an action *in rem*, and the death of the party who would be the defendant abates any such proceeding even if instituted prior to the death of the defendant. Therefore, the claim of Ben B. Jackson for automatic insurance in this case as child of the above named soldier has been disallowed."

So that is what I rely on as to demand and refusal for the payment of the insurance. And on authority of those letters I brought this action. I know nothing personally about the family. As to relationship only from my investigation. All I know is hearsay, nothing of my own knowledge. My first client was Jessie Jackson, a brother of the dead soldier. He brought the claim to me. I have the letter here. I don't recall when that was. It was in May, I think. Either April or May. This is a letter I wrote the Veterans Administration on be-

half of the brothers and sisters on May 28th, 1932. At any rate, in the Spring of 1932.

RE-DIRECT EXAMINATION.

By Mr. WISE:

Upon my investigation in this matter as Attorney and Guardian in this case I ascertained the date that this child was born as near as possible. This is the child here that I am guardian of. That is him. Ben B. Jackson.

TOM POLITE was called by Counsel for the Plaintiff, and being duly sworn, testified:

DIRECT EXAMINATION.

By Mr. WISE:

I live in Ridgeland, South Carolina. Jasper County. My last birthday I done 49. I born 1887. I work, you (16) may say, call it railroad. I totes mail, take care of baggage, and look after passengers for Atlantic Coast Line in the Town of Ridgeland. I start on that job the 15th of January, 20 years ago. I knew Jake Jackson all my days. We all raised right on one plantation. That plantation was 2 miles and 6/10th from Ridgeland where my house sat,—all the community, all us there. I live right there now. I have been living there all my life right there, from there to Ridgeland, up and down the road. Jake Jackson lived from me during that time about the length of 5 acres, his house from my own, straight. Jake was colored. I knew Grace Beeton. I knew her all her days. I live around about—Jake Jackson's house is between my house and her own, and Jake live about 5 acres from Grace's house—about the length of 10 acres. About 10 acres from Grace's house. I see Jake all the time during the time he got large enough to work. I carried him with me on the railroad. He was flagman for the boss on the bridge gang. He worked for Mr. Walter Gilmore on the bridge gang. He needed a flagman and I carried him out there and he been flagman out there until he put him to work, and I see him all the time because I was the one carried him out there. I was the one who got the job for him. He continued to work for the Coast Line until he went in the Army. So far as

I know of. He took a trip to Brunswick to see his brother and while he was there they all stand examination for the Army. He stood the examination at Brunswick and they carried him from Brunswick, Ga. Any-
(17) way, he went in the Army. During this time that we were working for the railroad we all sleep in shanty cars during the week, and on Saturday night the captain would give me a gang pass to carry the mens home. He lets 6 go this Saturday and 6 the next, and by me being the head colored man, the pass come in my name. That give me a chance to go every Saturday.

Q. You were the head man down there. A. Yes, sir, and I tell who I wanted to go this time, and I left some stay two weeks on the job. The fellows I like I carry every Saturday.

In other words, the ones I didn't like, I didn't take them. Those fellows that wouldn't work and were stubborn on the job make me mad, and I left them. During this period of time that Jake Jackson was working with the Coast Line, as to where Jake Jackson lived and spent the nights and who he was with, I will tell you this: he go to his sister's house and put his luggage down and go on to Grace house, and sometime he tell me when it is time to go back—we go back on the train, on No. 80 to Drayton Hall—and he tell me that if he don't wake up I must come by Grace's house and wake him up. I went sometimes and wake him up and we catch a car and come on down. It was over five years or more that I would go to Grace's house to get him, because I work on the bridge gang seven years, and I carried him two years after I been there. About five years. During that time that he was staying with Grace, at Grace's house, two children were born to Grace. The first child's name was Alice, a little girl. That child lived about 6 months.
(18) Upon the death of Alice, Grace had another child. That child was named Ben. That is the same fellow there, Ben. I call him minor. These little fellows grow fast now, but this boy ain't no more than 17 or 18. This child was born in 1917, in August, but I don't know the date of the month, but he was born in August, 1917. I stated that during a period of five years or more, while Jake was working with the railroad, I was bringing him backwards and forward, and I stated that if I liked the

boy I would bring him in every week, and if I didn't like him, he would get to come in every two weeks. I am not in a position to state whether Jake came in every week. I will tell you how I work that. The boss give me orders and tell me what to do. Mr. Gilmore tell me what to do. So the fellows that act mulish and give me back tongue and wouldn't do what I tell them, I left them in the car Saturday night. He walked off and don't go back to work unless he wants to. Many time Jake stay home a week or two weeks and catch me on the next time. There was never a time that I stayed home for a week at a time. I never stay. I never sick. I never take a drop of doctor's medicine. There would be a hundred and three days before I lose one. I was home every Saturday and every Sunday, and I would go back on Monday morning. I was home for two nights out of every week, during all this period. Every time I wanted Jake I could find him with Grace. Grace stayed in her own house. Grace had a house of her own. Her mother dead and left the house there and Grace (19) stayed in the house by she was the only single girl. Grace's mother owned this house and Grace stayed there. That boy is staying in the same house right now. This little boy was born in that house. He born right in the same house. It need fixing now though. As to the reputation and the general knowledge in that community as to who Jake lived with during this period of time—he was living with Grace. It looked to me like they been man and wife because he don't try to hide it. Sometimes he take the little fellow and carry him to meeting. He take the boy in his hand and tote him and go to meeting and go on back. I had to tote my old lady's own. It was generally known in the community that Jake Jackson was the father of this child. During this period of time, as far as I know, Jake supported and maintained Grace, because Capt. Gilmore used to sell groceries on the cab cars to the men who worked for him, and when he come home Jake buy groceries from the commissary like, and carry them for Grace while Grace sick with that child, and sometimes he leave money because he borrow money from me to leave there. When this first child Alice was born, I know of my own knowledge Jake continued to go to that house and take groceries to Grace. He was doing it all the time. After the first little girl was born, when Grace became an expectant mother again

he stayed right on as far as I know. I have to carry the little sack to my house. I don't have but a short while home and I spent most of my time home. I never (20) saw any other man go with Grace during this period of time that Jake was staying at her house. Not them little while I been home. Not on Saturday and Sunday. If they go they go in the nights when I ain't see 'em.

CROSS EXAMINATION.

By Mr. WILSON:

This boy's mother's name is Grace Beeton. She is dead now. She died—I figure on about four years. She died in 1932, I think. Grace mother named Jane Beeton. Grace had several children. I think she had one before she had that little girl. His name was Henry Beeton, and after this boy was born here, Grace had some more children. One name Katie Beeton, the next one, next to that boy there. She was born after Jake died. So she wasn't Jake's child. Not that I know of. Jake was already dead. Jake didn't go to the Army from down there at our place. He went to Brunswick. He got in Brunswick two weeks before he went to the Army. He went to see his brother. His brother was sick. When Jake died, he died in the Army, and while he was sick there in the Army he told the Army people that his nearest kin was Agnes Jackson. Jake's sister. She lived down there at Ridgeland. Agnes was Jake's sister and lived at Ridgeland. If he told those people in the Army that, he told them right. When Jake died I believe they sent the telegram to Agnes that he was dead. I wasn't home. I knew it at the time and wanted to know what to do with the body, and they brought him (21) back to Agnes' house. And buried him right there at Agnes' house, who was his sister. Grace was living then. She was living right there where she had been all the time. He could have easily told them in the Army that Grace was his wife and the telegram been sent to Grace just like it was to Agnes. They lived about five acres apart, right there in the same place—community. We have got a little town there, Mitchellville and Agnes and Grace both lived at Mitchellville. Grace never married. Not that I know of. She was never considered a married woman, she was no more than

Grace Beeton. If she married, Grace Beeton would go by some other name. And she never did do that. I call it Grace's house. Jake is the only person I see there the little while I been home. I only been home Saturday nights and Sundays. The other time I am on the job. Jake stayed there Saturday and Sunday night, as far as I know of.

Q. But Jake never claimed he was married at all. He was a single man. A. That is what he looked to me. I ain't never heard of no wedding. Some colored people ain't particular with no wedding no how.

Q. He didn't claim Grace was his wife, did he? A. He claim he was going with her.

Q. I understand that. No doubt about that. But he didn't claim she was his wife, did he? A. I reckon he did.

Q. Now don't you know he didn't? A. I believe he claim her as his wife in this way, but they ain't had no wedding or preacher or nothing like that.

(22) Q. But he didn't claim Grace was his wife, did he? A. Yes, sir, in a way.

Q. You never heard him say "Grace Beeton is my wife", did you? A. No, sir, only he talk about going to his girl's house.

Q. Did you ever hear her say Jake was her husband? A. She call him fellow.

Q. And that was the relation you knew they maintained, not husband and wife, but they were living together. Is that right? A. Yes, sir. I am going to tell the truth as far as I know about it.

Q. Every now and again in the last 8 or 10 years, or 4 or 5 years, somebody representing the government would come to you about this thing, and you always told them just like you told here today, that while you knew they lived together, they didn't claim to be man and wife. A. As far as I know of, that is the way I know it.

RE-DIRECT EXAMINATION.

By Mr. WISE:

When Henry Beeton was born I don't think Jake was going with Grace. Henry was the first child born as far as I know of. And so far as I know, Jake was not going with her at that time. Katie Beeton was born

after Jake's death. I couldn't tell how long after Jake died it was when Katie was born. Katie is not much over 14 years old, between 13 and 14. It must have been four or five years after Jake's death when Katie (23) was born. Whether Agnes Jackson is here in court I couldn't tell. They have got some of them upstairs. I couldn't tell whether she is here or not. That little Jackson girl, Bessie, is not here. I know she is not here because she is sick. I know Maria Drake. She is a sister to Grace. Jake's brother that been to Brunswick was named Peter Jackson. That is his oldest brother. I said that Peter was sick, when Jake went down to see him. Jake went down to see him one time as I know of. The same time he gone in the Army. He never did come back until he come back dead. I directly couldn't tell you how long he had been gone before he was drafted in the Army. I don't know when he was drafted or when he went in the Army, because that is a long ways from me, over a hundred or more miles. This boy at the time when he went there couldn't have been over a year old or 6 months, something like that. Jake didn't went to stay, but he got out of a job. He went out there, and when his brother get some better he get a job and work some. Jake did not work continuously with the Atlantic Coast Line until he went to Brunswick to see his brother. Not regular. When he was on the job he lost his job. Then he worked some on the section gang. That is how come he got fired. He trusted to work on the trestle force. He lost his job on the trestle force, then he went to the section force, but he didn't stay there. He did not work with the railroad up until the time he went down to Brunswick to see his brother. He didn't have a job all the time. We worked 6 regular men on the sec-
(24) tion force. The last work he did at Ridgeland was with the Atlantic Coast Line section force, not with the trestle force, but section force. That is he kept those government tracks in good shape so the trains could run.

RE-CROSS EXAMINATION.

By Mr. WILSON:

Grace's mother and my mother were sisters, and Jake's mother and my mother were sisters. I was first

cousin to Jake and first cousin to Grace, and Grace and Jake were first cousins.

MARIA DRAKE was called by Counsel for the plaintiff, and, being duly sworn, testified:

DIRECT EXAMINATION.

By Mr. WISE:

I live in Ridgeland. Two miles out of Ridgeland. I am a sister of Grace Beeton, oldest sister. I knew Jake Jackson all my days. When he born we live just about an acre apart. I have lived all my life in one settlement. All my life in that little community of Mitchellville. During the time that Jake was living in this settlement I was living right there, living in my own home. I was married at that time. I have children. My sister Grace was living right there by me, in her own house. *He* come into that house by her mother, after *he* mother died. She just continued to *say* in the house. Grace is dead. *He* died about—near four years ago. Jake Jackson is a little kin to me, first cousin. I know about Jake working for the railroad. As near as I could realize he worked for the railroad about five or six years, as I know (25) of. I couldn't tell you who he was working under. The head colored man was Tom Polite. The man here. During this time, that he was working with the railroad he lived right there with my sister Grace. While he was living there children were born. The first one was Alice. Alice is dead. Alice lived after she was born as near as I could realize about three months. She lived about three months. During that time that Alice was born, and before she was born, and during the time right after she was born, Jake continued to stay at the house with Grace. It was generally known who was the father of that little girl, Alice. He said so and my sister said so. He took care of him. Another little boy came along, Ben Jackson, but his name is Ben B. Jackson. That is Ben all right. He take care of him until he went to the war, yes, sir. Because I give him money myself to take care of my sister. Because I waited on my sister—because she was with that boy. I nurse her and buy for her. About the little girl Alice—I was with her then. Yes, sir, right there. Jackson before he leave to go off to the Army did not go some other place first.

He leave her house that morning, he leave from Grace house that morning. He say he was going to War. He leave that morning and say he was going to war. He was working with Tom Polite—I couldn't tell where he was working at, but he was working, because when they carry him home he leave Grace house that morning and tell her he was going to the war. During that period of time that Grace and Jackson were living together in this house, I have estimated it was around five or six (26) years. I never seen a one there but he. No man been there but him.

Q. What was the general reputation in the community as to who was the father and mother of Alice? A. Jake Jackson and Grace Beeton.

Q. What was the general reputation as to who was the father and mother of the little boy Ben? A. Jake Jackson and Grace Beeton.

Q. Was it generally known and the reputation in that community? A. Yes, sir, among all the people.

Q. Was it general reputation and known in that community that Jake and your sister Grace lived together? A. As man and wife. That is all I know. They lived together as man and wife.

Q. They stayed together? A. They stayed right there together.

Q. For how long a period now did they stay together there, you say, as man and wife,—for how long a period? A. Five or six years as near as I could get at it. That is, that I know of.

I don't know if Jake had a brother down in Georgia. I knew a boy named Peter Jackson. Peter and Jake were brothers. Peter was my first cousin, too. That is about as near kin as you can get. I don't know anything about my first cousin Jake going down to see Peter. Peter went off as a small boy. I don't know much about him. He went off as a small boy to Georgia. I don't know very much about Peter. I never hear anything about Jake being down to Peter's. I can read and write (27) just a little. When they brought Jake back from the Army he was buried to our cemetery, a place call Burton graveyard. Right in the community of Mitchellville, right next to Okatee Club.

CROSS EXAMINATION.

By Mr. WILSON:

Ridgeland is the County seat right there by me, the Courthouse is right there at Ridgeland. I live right close, two miles from it. I don't know the Board that caught Jake and sent him to the Army. I don't understand you. I don't know the Board that used to catch the boys and send them to the Army. I never knew that they would go to the Courthouse and register and tell all they knew. I never go no where hardly. I never knew until he come back there that morning and tell Sister Grace he was going. He leave from Mitchellville —what I mean from Grace house. That very day that he went to the Army he left right there. That is my story.

Q. Well, when he died there in the Army they sent a telegram to his sister Alice telling about it, didn't they? A. Yes, sir.

Q. Telling her that he was dead? A. To his sister Alice?

Q. Yes. A. He ain't got no sister named Alice.

Q. Maybe it was Agnes. A. They didn't send it to his sister Agnes because she was a little girl.

Q. You mean Jake's sister Agnes was a little girl? A. Yes, sir.

(28) Q. When he was in the Army? A. Agnes, yes, sir, she was little. They might have sent it to his sister Mary.

Q. How old was Agnes? A. I couldn't tell you.

Q. How old is she now? A. I couldn't tell.

Q. But about how old? A. I just can't estimate how old she is because I never did find out about the age.

Q. Is she 40 years old? A. No, sir, she ain't 40, a long ways from 40, because me myself I got a girl older than she is.

Q. How old is your girl? A. My girl is 23 years old.

Q. And is older than Agnes? A. Yes, sir, she is older than Agnes.

Q. Did Jake have any sisters younger than Agnes? A. Yes, sir, he got a sister younger than Agnes.

Q. She must have been just a little girl. A. A small little girl.

Q. So if Jake claimed he had some dependent sisters to look after, Agnes and—what is the other named? A. Agnes and Bessie.

Q. She was a little girl, too? A. Small.

Q. Well now, if Jake wanted to stay out of the Army to look after his sisters, he must have had to look out for those little girls. A. I don't understand what you mean.

(29) Q. When he told them when he was drafted that he had to look after and support somebody, that must have been who he was talking about? A. He left his child to take care of.

Q. That doesn't answer my question. I say, those two sisters were little girls, Bessie and Agnes, they were little girls. A. Small.

Q. And his father and mother were dead. A. His father wasn't dead. I don't know if his father was dead. It has slipped my memory. He might have. I know his mother was dead.

Q. His father was, too, wasn't he? A. I couldn't realize whether his father was dead or not.

Q. You just don't remember? A. I just don't remember.

RE-DIRECT EXAMINATION.

By Mr. WISE:

Ben is somewhere around 18 years old. I know that. I know he is not 21.

MINUS WRIGHT was called by Counsel for the Plaintiff, and, being duly sworn, testified:

DIRECT EXAMINATION.

I live in the section of Mitchellville, close to Ridgeland. I work for the CWA now. I been working with the Coast Line. I worked with the Coast Line years ago. I knew Jake Jackson. I been knowing Jake the best portion of my days. We were partly raised up together. (30) During the time that Jake worked for the Atlantic Coast Line on the section gang and bridge gang, I was working for the Coast Line then. I spent the

nights out in the shanty cars and came home on Saturdays and Sundays. During this period of time, Jake lived with this woman he call Grace. I knew Grace. I knew Grace, as near as I could come to it, from about 8 years old until she become a grown woman. She is dead. During this period of time, about whether or not Grace had any children born to her while Jake was living with her, one I knew of and I heard of the other one. One I knew of, this same boy Ben, but of course the other one born I don't know, but connect it up going backwards and forward. I don't know about the other. I saw Jake with this child and with his mother, because me and him went to the same house to see two sisters. Each one went to see one of the sisters. There was two sisters in the house. Jake was going with one and I with the other. I was going with Maria, the one that just testified. The two houses were together. Here was one and the other was there—just about 50 yards apart. They were all in the same yard, only two houses. Grace was living in her own house. It was her mother's house. I was going with Maria. When Jake went there, he would spend the night over there. Jake been knocking around there for nearly—something over two years. Me and him been traveling back and forward. So he got this girl in a pregnant condition and they wanted him to marry. He asked me to marry too but I slip in and out, but they hold him in there to marry. Grace held him. She hold him to marry her and she say when he did (31) marry she was going to put him to law. That ease me out, because I didn't want to get married. I leave, but I slip in at night and when daylight come, I am gone.

Q. Well, do you know whether Jake was ever married to Grace? A. I know about the marriage. I couldn't prove up about the marriage, but he always claim about his wife, but I didn't press to prove it. Because I slip in and I been close enough to know he was there, because I hear him talking. Because I and him go there from the job. During this period of time when Grace was expecting a child Jake didn't leave that community. He stayed right there. He tote him bags of rations. When he tired, I help him carry it. I told that boy "You just as well be married, because you paying off just the same. You just as well get married". In other words, Jake

furnished food there and stayed there in the house. He claimed he bought clothes for this little boy. He had the luggage in the packages. I didn't search it, but he claim he had everything the poor woman needed.

Q. What was the general reputation in that little community as to the father and mother of this child, and with whom Jake lived? A. They expected Jake like he was living as that girl's husband.

Q. That was the reputation in the community, that they lived together as man and wife? A. Yes, sir, they didn't hide it.

CROSS EXAMINATION.

(32) By Mr. WILSON:

Q. So you thought he just as well be married? A. Yes, sir.

Plaintiff rests.

Mr. WILSON: Your Honor, we would like to move for a non-suit. I think this case clearly fails to come within the provisions of the law, your Honor. While it is true there is no question of what relation was maintained between Jake Jackson and Grace Beeton, which was in many respects exactly similar to that of husband and wife; yet they didn't claim to be husband and wife. There is not a single word of testimony in the record that either claimed the other as wife or husband. Tom Polite said very definitely that they did not, that she never claimed him as her husband. She said he was her "fellow". He never claimed her as his wife. She was his woman. And that your Honor, under the South Carolina law does not make husband and wife. That does not make common law marriage. They must hold themselves out to the world to be husband and wife, as I remember the law on it. They must not merely maintain the relationship similar to that of husband and wife, but they must hold themselves out to be husband and wife; and when they do not make any such claims, their relationship is not established. I think that is the rule that has come down from the old English law and has never been changed or questioned so far as I know.

(33) The COURT: There is no question about the law. The Court conceives it as absolutely correct.

Mr. WILSON: There is not a single line of testimony that they claimed to be husband and wife. Not a witness has said so.

The COURT: I am not very clear about that. I thought the testimony from the last two witnesses was that they did.

Mr. WILSON: Like husband and wife? I listened very carefully for that statement as I thought it was coming from these witnesses.

(The Court asks the stenographer for a transcript of the testimony of the last two witnesses on that particular question insofar as it shows what the community's idea of the relationship was, and what their own idea was.

(Recess.)

Mr. WILSON: If your Honor pleases, I think we can save a little time if your Honor will allow me to withdraw my motion for a non-suit and introduce certain records and move for a directed verdict.

(Withdrawal of motion for non-suit granted.)

Mr. WILSON: I desire to introduce, your Honor, the A. G. O. records in this case and to call particular at-
(34) tention of the Court and Jury to the questionaire of the veteran, which is dated December 24th, 1917, and which was signed at Tarboro, in Camden County, Georgia, in which the veteran made claim for exemption from the draft on the ground that he should have been placed in Class 3, Section C, which is a man with dependent helpless brothers and sisters, and his answer to the following question: Q. Do you claim exemption or deferred classification in respect of the registered name above, if so, state the division of each class and each class in which you claim you should be classified. A. Yes. in division C, Class 3. Signed Jake Jackson by his mark.

The other classification, your Honor, provides for a man with a wife, child or children, and no claim was made except for exemption in Class 3, division C, which is the dependent brothers and sisters.

The clinical record at the hospital in which the

veteran was confined immediately after his entry into the service: Name, Jake Jackson. Rank, Private, Company 56. Regiment or Staff *Crops*, 157, depot bridge. Age, 34 years. Service, years 5/365th, which would indicate he had been in the Army 5 days. Birthplace, South Carolina. Station, Camp, Gordon, Georgia. Date of admission in the hospital, May 14th, 1918. Source of admission, 157 depot Brigade, Religion, none. Home address, born in South Carolina. Name and address of the nearest relative, sister; Agnes Jackson, Ridgeland, South Carolina.

(35) I offer that as Defendant's exhibit No. 2.

Now, if your Honor please, I offer in evidence a letter dated July 19th, 1918, a copy of a letter which has come from the file of this veteran, dated July 19th, 1918, and addressed to Mrs. Agnes Jackson, Ridgeland, South Carolina. "Dear Madan—

Mr. WISE: I believe we certainly would be entitled to look at that letter. We might want to interpose an objection before it is read.

Mr. WISE: We object to this letter going in and our ground of objection is that this letter was addressed to Agnes Jackson, who is a sister of the soldier, and a letter that was written by her, a statement made by her, the same girl. She is not a party to this suit, and we object to the letter going in under any circumstances whatsoever unless it could be some evidence produced here as to why Agnes Jackson is not in Court. That hasn't been gone into, and it is a matter of common knowledge that when any one dies while in the service, why the brothers and sisters and everyone else, if it was possible for them to do so, all of them came in to claim to be the dependent. We do not think it is competent in this case, and has no bearing as to it.

Mr. WILSON: Your Honor will note this is a letter directed to Agnes Jackson, who was designated by the soldier as his nearest relative, suggesting that she file a claim for any benefits that might be due, and her reply as to the family relationship of the veteran.

(36) Mr. WISE: Agnes Jackson is in this Courthouse here.

The COURT: I don't think it is admissible at this time, Mr. Wilson.

Mr. WILSON: Will your Honor allow me to argue this just a moment? This is a letter from the Govern-

ment officials charged with the duty of looking after the dependents of soldiers, written very shortly after death to the person that he designated as his nearest relative. They write here suggesting that there might be certain claims and benefits due, and specifically ask her to fill out Form 501, which she does and returns, before there was any question of insurance. As a matter of fact, at that time there was no such thing as automatic insurance, that Act granting automatic insurance being passed, I believe, in 1921, and that is her reply, an official reply to an official request by the Government relative to the family status of this man. It seems to me that it should be admitted. Certainly it was a statement, the first statement coming after the death of the man from a member of his family, and the one designated as his nearest relative. We think it is admissible.

Mr. WISE: Your Honor, please—

The COURT: You need not argue. In my opinion it is not admissible on several grounds.

(Exception noted by Mr. Wilson.)

(37) Mr. WILSON: That is the Government's case, your Honor.

Mr. WISE: We have something in reply since the AGO record has been put in evidence.

IN REPLY FOR PLAINTIFF.

AGNES JACKSON GADSDEN was called by Counsel for the Plaintiff, and, being duly sworn, testified:

DIRECT EXAMINATION.

By Mr. WISE:

My last name is Gadsden. I am married. My name before I was married was Jackson, and it is Gadsden now. In other words, I was Agnes Jackson. I had a brother in the World War. He was named Jake Jackson. I live in Ridgeland. When my brother died I was not sent a telegram advising of his death. I was small. I ain't know nothing about it. When he died I been small, about that high (illustrating). I been small. I know what a telegram is. I don't remember about getting a telegram about my brother dying. No, sir, I can't re-

member. I been too small to remember. I in my 21 right now. I don't know how old I was when my brother went in the war. I been too small to remember. I had older sisters. Mary Clark. *He* the one raise us. That is an older sister. I have another one. Her name is Bessie Jackson. I ain't got no more, no more sisters than Mary Clark and Bessie. I older than Bessie, but Mary Clark *he* older than all of us, because *he* the one take care of (38) us. That is my sister. She is the one that took care of me and Jake and Bessie. At the time my brother Jake went in the Army, she was in Mitchellville. I ain't remember who took charge of the funeral when my brother was brought home. I been too small.

CROSS EXAMINATION.

By Mr. WILSON:

I in my 22. I am not but 22 years old. I don't remember when my brother went off in the Army and came back there and was buried. I was too small.

Q. Well, you know your brother wasn't married, don't you? A. No, sir, I ain't know nothing, whether he been married or not.

Q. You don't know he was not married? A. No, sir, I been too small to know anything.

Q. Well, you know now he wasn't married, don't you? A. No, sir, yes, sir.

Q. Which do you mean? A. No, sir.

The COURT: What do you mean?

Q. You don't know he never married Grace Beeton? A. No, sir, I don't know.

Q. You don't know he never claimed to be married to Grace Beeton? A. No, sir.

Q. You don't know anything at all about it? A. No, sir, I don't know. I been too small. Grace Beeton die. (39) Q. Two or three years ago. You knew Grace Beeton, didn't you? A. Yes, sir.

Q. What name did she go by now? A. Grace Beeton.

Q. And ever since you were a little child, you knew Grace Beeton as Grace Beeton? A. Yes, sir, that is all I know.

Q. You never heard of her being called Grace Jackson? A. No, sir.

Q. She was Grace Beeton till she died? A. Yes, sir.

Q. She wasn't Jake Jackson's widow, was she? A. No, sir, I don't know.

Q. You knew her as Grace Beeton? A. Yes, sir.

Q. Are you married? A. Yes, sir.

Q. That is how come you call yourself Grace Gadsden instead of Grace Jackson, is it not? A. I Agnes Gadsden.

Q. Your husband is named Gadsden? A. Yes, sir.

Q. And if Grace had a husband she would go by the name of her husband, too, wouldn't she? She would go by Jackson? A. Yes, sir.

The COURT: That might depend on whether she was married or not.

Q. How long have you been married? A. 6 years now.

RE-DIRECT EXAMINATION.

(40) I know what a nephew is. I recognize Ben as my nephew. That my nephew.

The COURT: I would simply call attention to the fact which has developed, Mr. Wilson, bearing upon my ruling on the admissibility of the paper offered in evidence by the Government. It now appears to be absolutely certain that Agnes Jackson never made any such report.

MOTION FOR DIRECTED VERDICT.

Mr. WILSON: If the testimony is true, your Honor. The Government desires to move for a directed verdict upon three grounds. First, that there is no legal disagreement. Second, that the action is barred by the statute of limitations, having been brought more than six years after the cause of action arose, as provided in the Act of July 3rd, 1930, and more than three years after the appointment of a guardian. The Act provides, if your Honor will recall, that suit may be brought by an insane person or other persons under disability at any

time within three years after the removal of the disability. Now, the guardian in this case, according to his own testimony, was appointed, I forget the exact date, but early in 1932, more than three years before this action was brought. We think the action is barred by the statute of limitations. And upon the third ground that there is no substantial evidence that there was a common law marriage between Jake Jackson, the alleged father of the plaintiff, and Grace Beeton, the mother of the plaintiff.

(41) (The Court refuses the motion for a directed verdict, and submits the case to the jury.)

(Exception noted and allowed to the overruling of the motion for a directed verdict.)

Mr. EDMUNDS: We would like to make a request to charge, which isn't entirely consistent with the law applied by your Honor in refusing the motion for a directed verdict. We conceive the law to be that there can be no establishment of a common law marriage without the full knowledge of the parties. Your Honor intimated in the ruling that perhaps the parties had committed certain acts which would as a matter of law compel the Court to say that they were married by the common law.

The COURT: No, you misunderstood me. It is not established by acts unless those acts are continuous and create the reputation in the community.

Mr. EDMUNDS: May I point this out: That the reputation in the community is secondary evidence as to marriage or no marriage. The primary evidence is the testimony of the parties to the status or the contract, whichever you might call it. If a man comes into Court and says, "Yes, we were marired and considered ourselves married. We had an agreement to that effect. We weren't going through any formal steps to bring it about, but we said we were going to be man and wife and raise our family." Then their reputation in the community could not possibly affect that testimony. That would be conclusive in fact. But the reputation only comes in when the parties are dead. My understanding of the books is (42) that there can be no common law marriage except through the consent and knowledge of the parties to the marital contract, and I have got to call it a contract for

the purposes here, although in the late decisions some judges say it is a status and others say it is a contract. In the Della Torre case here in Charleston that question came up then and was discussed, and they call it one or the other. Some refer to it as a status and others as a contract, but at any rate to this extent it is a contract, that there must be an agreement, a meeting of the minds of the two parties that they will live together as man and wife. Nothing could possibly make them man and wife unless they themselves thought they were and intended to be. So I think the primary evidence in the case is evidence coming from one of the parties, which we have in this case in those records. It isn't positive evidence because the man didn't say, "I have no wife or child". But it is evidence that he had no wife and no child.

The COURT: I will charge them on that.

Mr. EDMUNDS: The request we want to make is that they could not be husband and wife by virtue of the common law rule unless they themselves agreed to be. That that is absolutely essential in any marriage whether formal or informal. The elements of a contract of marriage are no different in the common law than when they step before an officer capable of giving an oath. The elements are the same. In common law the elements must be the same. They must accept each other as man and wife.

(43) The COURT: Is there any question between Counsel as to the right of the pjlaintiff to recover if it should be established that the ward is the legitimate child of the veteran?

Mr. WILSON: In the event it is established?

The COURT: Whether there is any question between Counsel under the provisions of the Act that the plaintiff can only recover for his ward if it is established that the ward is the legitimate child of the veteran?

Mr. WILSON: There is no question on that. It is also admitted that he wasn't in the service as long as 120 days.

CHARGE TO THE JURY.

Gentlemen of the Jury, the claim in this case as set out in the complaint is based upon an Act of Congress, and without going into detail the provisions of the Act, I charge you that the plaintiff is entitled to recover for the benefit of his ward if it be established to the satisfaction of the Jury first, that the ward is the legitimate child of the alleged deceased veteran Jake Jackson.

This Court realizes, as perhaps has already been intimated to you, the difficulties under which the jury will have to reach their conclusion on the issue presented to them. In discussing before you some of the motions and testimony in this case and commenting on it, some stress has been made upon the marriage status as be-
(44) tween persons of color. That necessarily followed the showing that the claimant was a colored boy, and that his parents were colored people. You also heard some discussion of a comparatively ancient statute, and of the marriage relations or cohabitations between slaves during the pre-civil war period, as a result of which it became necessary for the legislature of South Carolina to pass an act defining the legal and civil status of the children of such unions.

In passing the act defining the status of the children of the relation between slaves, the legislative body provided that children of such marriages should be deemed legitimate, provided that they should not be deemed to extend to persons who have agreed to live in common convention after their emancipation. I think you understand as to what the effect of that status was then.

After that time and prior to that time, before, both with relation to free whites and free negroes, the law provided that people were married people, people who lived together were married people when their declarations or conduct was such that the community was justified, the community in which they lived, in classing them as married people, as a result either of their conduct or declaration. That, of course, established the law of inheritance, and also established the law of legitimacy of off-springs.

I charge you that in the present instance, knowing that you will give exactly the same consideration to this question in this case with relation to this plaintiff, the

ward of the plaintiff, exactly the same honest consider-
(45) ation that a jury of reasonable, unprejudiced, high minded South Carolinians would give to the same state of facts in any case involving a question of the legitimacy of a child, whether high or low, white or colored, that you must determine whether the relationship between the admitted father and admitted mother of this boy was such as to constitute a state of marriage.

I think the testimony shows, and you will be fully justified in starting off in consideration of that issue with the fact that the beginning of the relationship between the mother and father of this boy was illicit. That they were not husband and wife. There is certain testimony to that effect. Now, you have on that question, as the Court sees it, and you are not limited, gentlemen of the jury to what the Court sees and what the Court hears and understands, but you are to find your verdict and base your conclusions on anything that you heard, saw or understood from the witness stand or from any document offered in evidence, and that any comment the Court makes on the testimony is merely intended to be helpful to the jury in drawing their attention to what appears to the Court to be the salient points bearing on the issue presented.

You have before you testimony of the first witness on the stand, the name escapes me—Tom Polite. A rather intelligent specimen. A man who you would be warranted and justified, from his own testimony, was somewhat above the average of negroes in his vicinity. He testified that the veteran Jake Jackson as he carried him from his work to his home community, backwards
(46) and forward from time to time, when he was working with the railroad company, his actual work being on the road quite a distance from his home community; that when he carried him backwards and forward, it was within his knowledge that Jackson would repair to the home of this boy's mother, and that when Jackson was ready to go back with him to his work on Monday morning, he would come from the home of this boy's mother. That they were never married so far as he knew. In fact, I think his testimony goes further than that and says he knew they were not married to the extent that no ceremony was ever performed, or that they went together as married people with the intention of living together

as man and wife, and that his only knowledge and only observation of these two people was that when in Ridgeland or Mitchellville, a suburb of the large city of Ridgeland, Jackson would buy groceries, take them with him to this woman's house, and also his knowledge is that children were born.

You have the testimony of the veteran's sister, and she does not attempt to intimate that there was any legal principle in the inception of the relations between her brother and the mother of this boy, but that they lived together and everybody knew it in the community, and when she was asked the question—and I quote not only from recollection, but from the stenographer's transcript of her testimony. She was asked the question "Was it general reputation and known in that community that Jake and your sister Grace lived together?" This was not the veteran's sister, but the sister of the mother of the boy. Her answer is "As man and wife. That is all I know. They lived together as man and wife." She (47) testified as to other facts which would not support the theory of the marriage status, but would only verify the admitted fact that these two people were living together in that she testified she lived right close to the house of her sister, and Jake went there and lived there and bought groceries and carried them there, and these children were born and he looked after the boy, claimed the boy was his, and provided for him, and so forth.

Now, gentlemen, we have a character whose testimony you have heard. Rather boastful of his actings and doings so far as the relations between Grace's sister and himself were concerned. He testified that he was on friendly terms with Maria, the woman whom you heard testify. He testified that Jake had been knocking around there something over two years, that is, in connection with his statements about Jake going to the house of Grace and spending the night. Then he says conditions arose when they wanted him to marry. He says, "He asked me to marry too but I slip in and out, but they hold him in there to marry". "Who held him?" "Grace. She hold him to marry her and she say when he did marry she was going to put him to law. That ease me out, because I didn't want to get married."

Now, gentlemen, you have a right to conclude that there was a question after about two years of this illicit

relationship as to whether or not Jake should marry Grace, and that after that question arose Jake continued to live with Grace. Now, from that testimony of his partner, who was intimate with the one sister, do you infer that the continued relationship between Jake and (48) Grace constituted a status of marriage? He was asked "What was the general reputation in that little community as to the father and mother of this child, and with whom Jake lived?" His answer was, "They expected Jake like he was living as that girl's husband". Gentlemen, you have the right to interpret that as you think it ought to be interpreted. As an answer to that question, did he mean they expected Jake like he was living as that girl's husband or amount to testimony to the effect that the relation between the father and mother of this boy when the question arose prior to the boy's birth, from that time and on until after the boy's birth and the departure of the husband or the father? Whether those relations were such as to create in that community, and it doesn't have to extend beyond the community to do it—community generally means people who know you and know what you are doing and what you hold yourself out to be, and what you are. But the fact that you are living or that one is living with a woman is not sufficient for a community to conclude that they are married. There must be statements or circumstances *beoind* that to justify a finding that the relationship was no longer illicit, but had become that of husband and wife through the way in which they conducted themselves, and the way they held themselves out to that community.

Now, gentlemen, you have heard the argument here, and the fact that is disclosed in the testimony that when Jake Jackson went into the Army he did not disclose that he had a wife and child or children. In that connection I charge you that you have a right to consider (49) two things: The law of marriage as I have given it to you in South Carolina, and whether this father of this child knew himself to be a married man, not as a result of anything that he had said or anything that he had done necessarily, but as a legal result of his conduct and his daily representations to the people of his community.

I charge you that you may also take into consideration ignorance of the veteran, the soldier, as disclosed by the fact referred to in the argument—I haven't seen

the papers—that the papers required to be signed by the soldier were signed by Jake Jackson's mark. And whether of his limited understanding, and having lived in the community of Mitchellville and worked on the railroad every day, whether he had the mental capacity to realize, if it was a fact, that there was any question with relation to his dependents, and whether or not his legal responsibilities and liabilities were such as is required to be disclosed by these examinations at the time of enlistment, or prior to the enlistment, whether he had sufficient knowledge to realize that as a matter of law. If you so find and consider the testimony as to whether there was or not, and bring yourself to that conclusion as a matter of fact, whether he owed any responsibility to the woman he had been living with, or to her child, whether it was incumbent upon him to disclose that to the government.

In all events, gentlemen, the question for you, being on your oath, is "We find for the plaintiff", or "We find for the defendant". You can only find for the plaintiff if, upon consideration of all the matters that I have (50) referred to, or any other matters to your knowledge disclosed on the witness stand, or through documentary evidence in this case, you shall be satisfied by the weight of the testimony that the claimant in this case, Ben B. Jackson, was the legitimate child of Jake Jackson, the veteran, through whose war service or army service he claims these benefits. You must be satisfied by the weight of the testimony, the greater weight of the testimony. If consideration of all of these matters leads you to think that possibly they may have lived in this community in such a way as to hold themselves out as married persons, that isn't sufficient. You must be satisfied in your minds by the greater weight of the testimony that, taking all the circumstances into consideration, considering the principals, considering the community, the manner of life there, knowledge of their responsibilities insofar as they can be traced, all of these things you must rely upon if you rely upon any of it as warranting you as a jury of reasonable honest South Carolinians in finding a verdict for the plaintiff. If you are not so satisfied beyond a reasonable doubt, it is equally your duty to write on the back of this complaint "We find for the defendant", the result of which will mean, as I understand this case, that you are not satisfied by

the greater weight of the evidence that Ben B. Jackson, named in this complaint, is the legitimate child of Jake Jackson.

Mr. EDMUNDS: If your Honor please, the defendant would like to note an exception to your Honor's charge insofar as you charged the jury to this effect: That a (51) marriage might be legitimate without agreement between the man and woman that they were husband and wife. Now, that is not exactly the language your Honor used, but as I understand it, that is the effect of your Honor's charge. Now, we think that a man and woman can only be husband and wife—

The COURT: Gentlemen of the jury, if you understood me to say that there is a possibility of the marriage state existing between two parties without their agreement, I tell you now that is not the law, and you should not infer from anything I said if as a matter of agreement between the parties they continued to live together, although their prior relation had been an illicit relation, if at any time during that period they agreed to live together as husband and wife, then I charge you that that would create a marriage status, and without that agreement there could be no marriage status. But in the absence of testimony of one or the other as to whether there was an agreement, that could only be evidenced by their conduct, and the way in which they held themselves out to the community, to determine whether or not there was such an agreement.

(Exception allowed to the matter charged, so amplified.)

Mr. EDMUNDS: Might I suggest further your Honor, you have charged the jury to this effect, as I recall it: That the soldier may have failed to disclose that he was a married man for the reason that he didn't have sufficient mentality to know that he was married man. Now, (52) we think that that could not be the law for the reason there must be an agreement, a meeting of the minds, between him and the woman, and that if he didn't have sufficient mentality to know that, he could not, therefore, have been a married man. And we would ask an exception to that portion of the charge, your Honor.

The COURT: If the jury drew exactly that inference from what I said about his disclosures to the examining board, then I was very lax in my use of language. Gentlemen, what I endeavored to convey to the jury was that they woul be justified in connection with that disclosure to the examining board only in the event that they thought there was testimony to show their reputation in the community, and the way in which they held themselves out to the community, that they would give weight to his failure. On the other hand, and on the other side, his failure to disclose to the examining board that he did have a wife and child, that they would under the circumstances in this case be justified in giving consideration to the mental ability of the soldier to realize that by his continuing to live with the mother of this boy under circumstances which would enable the jury to reach the conclusion that they were considered as husband and wife. That in weighing the testimony on the other side, relied upon by the government, that being a part of his failure, to disclose it at that time, that they might consider that question. Not if he didn't have sufficient mentality to understand that he was married so much as whether he had sufficient mentality to understand what the effect of his disclosures to the examining board would be.

(53) In other words, I think I have already covered the point gentlemen that you in examining into this question haven't got Jake before you, and you haven't got Grace before you, and you can't find out from either one of them whether they agreed to live together as husband and wife, and that is the reason that the law says that conduct in the community and the way each holds himself out to the other in the community must determine that question, and would even go to the point of contradicting, if strong enough in circumstances, the statement of either one or both parties later on that they were not married. That is my idea of the law.

(Exception allowed to the charge on this point so amplified and explained.)

The COURT: Upon consideration of every circumstance detailed here, all the testimony you have heard, and such documents as you have heard read and such

as you want to carry to the Jury Room with you, you must be satisfied by the greater weight of the testimony that Ben B. Jackson is the legitimate child of Jake Jackson, you write a verdict "We find for the plaintiff". If you cannot satisfy yourselves beyond a reasonable doubt on that point by consideration of the testimony, then it is your duty to find for the defendant.

VERDICT.

The verdict of the jury was as follows: "We find for the Plaintiff."

EXHIBITS.

DEFENDANT'S EXHIBIT No. 2.

(54) Defendant's Exhibit No. 2 is as follows:

THE STATE OF SOUTH CAROLINA,
County of Jasper.

By L. S. McCormack, Probate Judge.

To Alphene W. Dowell,

WHEREAS, an application in due form of law, as appears by proceedings recorded in the office of the Probate Court for the County of Jasper in said State, has been made to me by Ben B. Jackson, to appoint Alphene W. Dowell, as Guardian of the person and estate of the said Ben B. Jackson, a minor now residing in Near Ridgeland, S. C. entitled to a distributive share in the estate of Jake Jackson, late of Jasper County, S. C. deceased.

AND WHEREAS, the said Alphene W. Dowell, has filed his bond in bond in this office as such Guardian as required by law.

NOW, THEREFORE, for the better securing the said estate for the benefit of the minor, and for him more careful maintenance and education, I do hereby commit the tuition, guardianship and education of the said Ben

B. Jackson, to you, the said Guardian charging you to maintain Him in meat, drink, washing, lodging, clothing, and such good education, as may be fitting, according to the circumstances of interest of the said Ben B. Jackson during his minority, take charge of his estate, and of your management thereof, when thereunto duly required.

(55) Given under my Hand and Seal, this 29th day of June in the year of our Lord one thousand nine hundred and thirty-five, and in the 159th year of the Independence of the United States of America.

(Signed) L. S. McCORMACK,
(Seal) Probate Judge for Jasper County, S. C.

DEFENDANT'S EXHIBIT No. 3.

This Exhibit is a certified copy of the records of the Adjutant General's Office pertaining to the veteran, Jake Jackson, the only pertinent parts of which to be included here are as follows:

QUESTIONNAIRE

BOARD FOR THE COUNTY OF CAMDEN, STATE OF GEORGIA, ST. MARYS, GA. (Stamp of Local Board)	Serial No. 398 Order No. 231	Name of Registrant: JAKE (Christian Name) JACKSON (Surname) Address ..... Street and Number of R. F. D. City—Tarboro County—Camden State—Ga.	Telephone No. .....

NOTICE TO REGISTRANT.—You are required by law to return this Questionnaire filled out in accordance with instructions contained herein within seven days from date of this notice. Failure to do so is a misdemeanor punishable by fine or imprisonment for one year and may result in the loss of valuable rights and in immediate induction into military service.

(Date) Dec. 24, 1917.

J. H. RUDOLPH,
Member of Local Board.

CLAIM FOR EXEMPTION OR DEFERRED CLASSIFICATION

NOTE TO CLAIMANTS.—This form is to be used for claiming exemption or deferred classification by or in respect of any registrant and for stating the grounds of claim. Place a cross (x) in Column A opposite the division that states the ground of claim. Boards are required to consider only grounds thus indicated by the claimant in Column A.

Column A.	Division	CLASS I.
.....	A	Single man without dependent relatives.
.....	B	Married man, with or without children, or father or motherless children, who has habitually failed to support his family.
(56)		

Column A.	Division	CLASS III.—Continued
.....	E	Highly trained fireman or policeman, at least 3 years in service of municipality.
.....	F	Necessary customhouse clerk.
.....	G	Necessary employee of United States in

	C	Married man dependent on wife for support.
	D	Married man, with or without children, or father or motherless children; man not usefully engaged, family supported y income independent of his labor.
	E	Unskilled farm laborer.
	F	Unskilled industrial laborer.
		Registrant by or in respect of whom no deferred classification is claimed or made.
		All registrants not included in any other division in this schedule.
		CLASS II.
	A	Married man with children or father of motherless children, where such wife or children or such motherless children are not mainly dependent upon his labor for support for the reason that there are other reasonably certain sources of adequate support (excluding earnings or possible earnings from the labor of the wife), available, and that the removal of the registrant will not deprive such dependents of support.
	B	Married man, without children, whose wif , although the registrant is engaged transmission of the mails.
	H	Necessary artificer or workmen in U. S. armory or arsenal.
	I	Necessary employee in service of United States.
	J	Necessary assistant, associate, or hired manager of necessary agricultural enterprise.
	K	Necessary highly specialized technical or mechanical expert of necessary industrial enterprise.
	L	Necessary assistant or associate manager of necessary industrial enterprise.
		CLASS IV.
	A	Man whose wife or children are mainly dependent on his labor for support.
	B	Mariner actually employed in sea service of citizen or merchant in the United States.
	C	Necessary sole managing, controlling, or directing head of necessary agricultural enterprise.
	D	Necessary sole managing, controlling, or directing head of necessary industrial enterprise.

(57)

		in a useful occupation, is not mainly dependent upon his labor for support, for the reason that the wife is skilled in some special class of work which she is physically able to perform and in which she is employed, or in which there is an immediate opening for her under conditions that will enable her to support herself decently and without suffering or hardship.
.....	C	Necessary skilled farm laborer in necessary agricultural enterprise.
.....	D	Necessary skilled industrial laborer in necessary industrial enterprise.
		CLASS III.
.....	A	Man with dependent children (not his own) but toward whom he stands in relation of parent.
.....	B	Man with dependent aged or infirm parents.
X	C	Man with dependent helpless brothers or sisters.
.....	D	County or municipal officer.

		CLASS V.
.....	A	Officers—legislative, executive, or judicial of the United States or of State, Territory or District of Columbia.
.....	B	Regular or duly ordained minister of religion.
.....	C	Student who on May 18, 1917, was preparing for ministry in recognized school.
.....	D	Persons in military or naval service of United States.
.....	E	Alien enemy.
.....	F	Resident alien (not an enemy) who claims exemption.
.....	G	Person totally and permanently physically or mentally unfit for military service.
.....	H	Person morally unfit to be a soldier of the United States.
.....	I	Licensed pilot actually employed in the pursuit of his vocation.
.....		Member of well-recognized religious sect or organization, organized and existing on May 18, 1917, whose then existing creed or principles forbid its members to participate in war in any form, and whose religious convictions are against war or participation therein.

REGISTRANT OR OTHER INTERESTED PERSON MUST ANSWER THE FOLLOWING QUESTION

Q. Do you claim exemption or deferred classification in respect of the registrant named above? If so, state the divisions of each class and each class in which you claim that he should be classified.

A. Yes; in Division C of Class 3, and Division ..... of Class ....., and Division ..... of Class ..... (Date).....

(Address.).....

(Sign here) JAKE his x mark JACKSON.

(58) WAIVER OR CLAIM FOR EXEMPTION OR DEFERRED CLASSIFICATION.

(To be signed by registrant or other interested person whenever a waiver is used.)

I hereby waive all claim of exemption or deferred classification of the registrant named above.

(Sign here).....

(Date of signing.) .....

CLINICAL RECORD.

BRIEF.

19

Hospital Base
Register No. 12214 Ward 32
Name Jackson, Jake
Rank Pvt. Co. 56 Regt. or Staff Corps 157th D. B.
Age (years) 24 Race C Service (years) 5/365
Birthplace S. C.
Station Camp Gordon, Ga.
Date of admission May 4, 1918
Source of admission Infirmary
157th D. B.
Religion None.
Home address Born, S. C.
Name and address of nearest relative Sister, Miss Agness Jackson, Ridgeland, S. C.
Initials of admitting officer J. E. Traxler
(JES)

(To be filled in by ward surgeon when case is completed)

Disposition Dead, 10:30 P. M.
Date May 11, 1918.
Final diagnosis Lobar pneumonia, right middle and
(59) lower lobes and left lower lobe
Condition on completion of case Dead
1st Lt. G. C. Brooke, M. R. C.
1B Ward Surgeon.

TELEGRAM

18 Poon53Govt

Camp Gordon Ga May 12, 1918

Adjt General of the Army, Washington DC

Private Jake Jackson 56 th pro. Colored company 157 depot brigade never claimed has no identification number died from pneumonia May 11th 1918 emergency address Agnes Jackson Ridgeland SC

ROBERT B. TROUTMAN
Captain Inf R C. Commanding Co

Received A. G. O. MHay 13 1918

143pm

W. R. B. and Q. M. C.

Notified May 13, 1918.

MOTION FOR NEW TRIAL.

Counsel for the Government moved that the verdict of the jury be set aside and a new trial granted upon the following grounds:

First: That the Court was without jurisdiction to entertain this cause for the reason that the Plaintiff's cause of action was based upon a claim for what is known as automatic insurance, and since automatic insurance was a gratuity, an action thereon was barred by the repealing clauses of the Economy Act of 1933.

(60) *Second*: That the verdict of the jury was contrary to the greater weight of the evidence, there being no sufficient testimony upon which the jury might reasonably base a verdict for the Plaintiff.

ORDER REFUSING NEW TRIAL.

The Order of the Court refusing the motion for a new trial is as follows:

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF SOUTH CAROLINA.

Ben B. Jackson, by his Guardian Alphene W. Dowell, Plaintiff, *vs.* United States of America, Defendant,	Order Refusing New Trial

This cause was submitted to a jury at the January term in Charleston, to determine the sole issue then raised,—whether the minor claimant was the legitimate child of one Jake Jackson, who was drafted into service from Jasper County, South Carolina, on the 27th day of April, 1918, and who died in the army service on the 11th day of May, 1918. The claim of the minor was submitted to the Bureau under Sections 400 and 405 of the War Risk Insurance Act of September 2, 1914, by a guardian appointed in the Probate Courts of Georgia. Notice was given that the claim had been allowed and the allotment made under Section 401, and would be paid to anyone authorized to receive it in the minor's behalf by the Probate Court of Jasper County, South Carolina, where the claimant resided. A guardian being then ap-
(61) pointed in Jasper County, South Carolina, as required, the Director of the Bureau refused to pay, giving the reason that investigation failed to show that Ben B. Jackson was the legitimate child of the soldier by right of whose services the claim was made.

Marriage in South Carolina is not a civil contract, but a status. The evidence adduced on trial showed that the soldier Jackson—an ignorant negro—had been living in a suburb of Ridgeland, Jasper County, with a woman not his wife. When the woman became pregnant, the question of marriage arose. They continued to live together openly as husband and wife, the woman and her child—the claimant here—supported by Jackson. The woman retained her name, but the child was called Jackson, and was recognized as his in the community

where they were "accepted as husband and wife". Testimony to this effect was accentuated by a "buddy" of Jackson's, a co-laborer on a railroad gang, who told of his relations with a sister of Jackson's "woman" at the time the question of marriage arose, and of their continuation illicitly, in a quite different way from the recognized and open course thereafter followed by Jackson and the mother of his son.

The defence relied upon the statements of Jackson when he entered the service that he was unmarried and that his nearest relative was a sister.

(62) Under the law of this State, continuance of illicit relations between a man and a woman cannot of themselves ripen into a marriage, but declarations and manner of the parties, following a period of concubinage, may be liberally construed to create a state of marriage in support of legitimacy of offspring, and of rights arising under the laws of dower and of inheritance. Every case, therefore, in which the question arises, is determined by its own particular facts and circumstances. It may well follow then, that a man—and particularly an ignorant laborer such as Jackson was,—may not be conscious, in the absence of a marriage ceremony or specific declarations recognizing a state of marriage, that in the eye of the law he is a married man and father of a child recognized as legitimate under the inheritance statutes and otherwise.

So was the jury informed as to the law, and their verdict settled the legal rights of the claimant, with ample support in law and fact.

The Government now submits as proper for the Court's consideration on this motion, under authority of *United States* vs. *Trollinger* (Fourth Circuit—Jany. 6th, 1936), 81 Fed. (2d) 167, that plaintiff's claim for automatic insurance is in the nature of a gratuity or pension, and is barred by the repeal clauses of the Economy Act of 1933.

This Court is not entirely convinced that Judge Parker's opinion in *United States* vs. *Trollinger* would justify consideration of this point on motion in arrest (63) of judgment. The record shows that Government counsel have limited the issue on trial solely to legitimacy of claimant, and there is no suggestion of any after discovery as in the Trollinger case.

However, I am satisfied, from full consideration of the War Risk Insurance enactments, the Economy Act, and of the decision of the Supreme Court in *Lynch* vs. *United States*, 292 U. S. 571, relied upon to sustain the motion on this point, that it cannot prevail, and should be disposed of.

In *Lynch* vs. *United States, supra*, policies of yearly renewable term insurance issued under the War Risk Insurance Act are held to be, not gratuities, but contracts of the United States, and as such cannot be invalidated by subsequent Acts of Congress.

Did Jake Jackson, the soldier, have a contract with the United States for benefits to accrue to his son, Ben B. Jackson, which the son may now enforce? He had no policy issued to him in fact,—as presumably the plaintiff in the Lynch case had. If he had a contract, how was it created?

The War Risk Insurance Act of 1917, by Article IV, Sec. 400, expressly providing "greater protection for themselves (enlisted men) and their dependents", provides for the issuance, upon application and without medical examination, of "insurance against death or permanent disability" in stated multiples. Sec. 401 limits the time within which application may be made for "such insurance", with the further provision:

(64) "Any person in the active service on or after the sixth day of April, nineteen hundred and seventeen, who while in such service and before the expiration of one hundred and twenty days from and after such publication, becomes or has become totally and permanently disabled or dies, or has died, without having applied for insurance, shall be deemed to have applied for and to have been granted insurance, payable to such person during his life in monthly installments of $25 each. If he shall die either before he shall have received any of such monthly installments or before he shall have received two hundred and forty of such monthly installments, then $25 per month shall be paid to his wife from the time of his death and during her widowhood, or to his child, or widowed mother if and while they survive him: *Provided, however,* That not more than two hundred and forty of such monthly installments, including those received by such person dur-

ing his total and permanent disability, shall be so paid; and in that event the amount of the monthly installments shall be apportioned between them as may be provided by regulations."

Jackson, the soldier, was drafted into the service on 27th day of April, 1918, and died on the 11th day of May, 1918. Under the provisions of Sec. 401, having died in the service before the expiration of one hundred and twenty days without having applied for insurance, he, by the express terms of the Act, is "deemed to have applied for *and to have been granted insurance*", payable (65) by a limited number of monthly installments to his child (the mother having also died), if the child be alive for the number of months designated.

United States vs. *Carlson,* 44 Fed. (2d) 5.
Cunningham vs. *United States,* 67 Fed. (2d) 714.

If the Act under which this right accrued was dealing with gratuities or pensions, it does not say so. Article IV of the War Risk Insurance Act of 1917 is headed "*Insurance*". The claim here is based upon "*insurance*" deemed to have been applied for and granted", and claimant, otherwise entitled, "it to be regarded and dealt with as though he were an actual policyholder under that Act". *United States* vs. *Carlson, supra.*

It was also pointed out in argument that benefits accrued and allowed under Sec. 401 before the passage of the Economy Act of 1933 have not been construed by the Bureau as withdrawn and are now being paid to such claimants.

Motion denied.

EXCEPTIONS TO ORDER REFUSING NEW TRIAL.

Now comes the United States of America, Defendant in the above cause, by Claud N. Sapp, Esquire, United States Attorney, and excepts to the Order refusing the Defendant's motion for a new trial upon the following grounds, to-wit:

First, to the ruling of the Court that, as a matter of law, this action, being a suit based upon what is commonly called automatic insurance, was not barred by (66) the repealing clauses of the Economy Act of 1933.

Second, to the ruling of the Court as a matter of law that under the law of South Carolina a man "may not be conscious, in the absence of a marriage ceremony or specific declarations recognizing a state of marriage, that in the eye of the law he is a married man and father of a child recognized as legitimate under the inheritance statutes and otherwise", for the reason, it is respectfully submitted, that there can be no marriage between a man and woman in South Carolina, common law or otherwise, unless they thought and considered themselves to be man and wife.

CLAUD N. SAPP,
United States Attorney.
By S. HENRY EDMUNDS, JR.,
Asst. U. S. Attorney.

The above exceptions of the Defendant taken to the Order of this Court overruling the motion for a new trial by the Defendant herein are hereby allowed.

FRANK K. MYERS,
United States Judge for the Eastern
District of South Carolina.
March 31, 1935.

The foregoing constitutes all of the pertinent evidence introduced at the trial of this case. The Defendant tenders and presents the foregoing as its Bill of Exceptions in this case to the action of the Court and prays that the same may be settled, allowed, signed and sealed (67) by the Court, and made a part of the record in this case.

CLAUD N. SAPP,
United States Attorney.
S. HENRY EDMUNDS, JR.,
Asst. U. S. Attorney.

The foregoing Bill of Exceptions duly presented, allowed, settled, signed and sealed this 20th day of July, 1936, the same being in due time and within the term as extended by standing Rule 43 of this Court in effect on and after January 1, 1931, and by Order of this Court.

FRANK K. MYERS,
United States Judge,
Eastern District, South Carolina.

NOTICE.

To R. K. Wise, Esq., and A. W. Dowell, Esq., Attorneys for the Plaintiff:

You will please take notice that the Defendant proposes the foregoing as its Bill of Exceptions in this case.

CLAUD N. SAPP,
United States Attorney.
S. HENRY EDMUNDS, JR.,
Asst. U. S. Attorney.

Charleston, S. C., June 26, 1936.

Due and legal service of the foregoing Bill of Exceptions accepted and acknowledged, and a copy thereof (68) retained, this 27th day of June, 1936.

R. K. WISE,
A. W. DOWELL,
Attorneys for Plaintiff.

(69) **ADDENDUM TO BILL OF EXCEPTIONS.**

Filed August 27, 1936.

The two letters hereinafter set out were inadvertently omitted from the Bill of Exceptions settled, signed and filed in this case on the 20th day of July, 1936:

"Mrs. Agnes Jackson,
Ridgeland, S. C.

July 9, 1918.

In re: C-16485
Jake Jackson
56th Co. 157th
Depot Brigade

Dear Madam:

"The Act of October 6, 1917, has been recently amended, extending the class of beneficiaries entitled to compensation, which is separate from and in addition to contract insurance.

"In order to enable this Bureau to determine whether or not any claim for compensation existed in this case, you are requested to answer all the questions on the amended form 501, a copy of which is enclosed, and return same promptly to this Bureau.

"All correspondence with this Bureau, relative to this case should bear the full name, rank, organization and file number of the soldier as given above.

Very truly yours,

Deputy Commissioner Compensation.

NLH/amp Per....."

(70) "EMERGENCY INFORMATION C-16485

TREASURY DEPARTMENT
BUREAU OF WAR RISK INSURANCE

"Miss Agnes Jackson, Washington, D. C.,
Ridgeland, S. C. July 9, 1918.

Dear Madam:

"It appears that Jake Jackson, who died May 11, 1918, while serving 56th Co. 157th Depot Brigade gave your name and address for use in emergency.

"Please furnish the information requested below, and return in inclosed envelope, which needs no postage. Kindly answer every question.

Deputy Commissioner Compensation.

amp Per .....

1. Your relationship to him, if any: Sister.
2. Name of his widow, if any: He was single.
3. Her post-office address: X
4. Names and addresses of his children, if any: None.
5. Name and address of mother: No mother living.
6. Was she dependent for support on deceased? He was her support before her death.
7. Name and address of father: No father living.
8. Was he dependent for support on deceased? He was his Father's support before his death.

AGNES JACKSON.
(Signature)
Ridgeland, S. C.
(P. O. Address)"

(71) The Defendant tenders and presents the foregoing as an Addendum to the Bill of Exceptions in this case, which was inadvertently omitted in the original Bill of Exceptions, and prays that the same may be settled, allowed, signed and sealed by the Court and made a part of the original Bill of Exceptions herein heretofore filed, and a part of the record in this case.

CLAUD N. SAPP.
United States Attorney.
S. HENRY EDMUNDS, JR.,
Asst. U. S. Attorney.

The foregoing Addendum to the Bill of Exceptions herein embracing two letters, which were inadvertently omitted from the original Bill of Exceptions in this case heretofore settled, signed and filed, duly presented, allowed, settled, signed and sealed this 25th day of August, D. D. 1936.

FRANK K. MYERS,
United States Judge for the
Eastern District of S. C.

NOTICE.

To: R. K. Wise, Esq., and A. W. Dowell, Esq., Attorneys for the Plaintiff:

YOU WILL PLEASE TAKE NOTICE that the Defendant proposes the foregoing as an Addendum to the Bill of Exceptions in this case.

CLAUD N. SAPP,
United States Attorney.
S. HENRY EDMUNDS, JR.,
Asst. U. S. Attorney.

Charleston, S. C., August 17, 1936.

(72) Due and legal service of the foregoing Addendum to the Bill of Exceptions accepted and a copy thereof retained this 20 day of August, A. D. 1936.

R. D. WISE,
A. W. DOWELL,
Attorneys for Plaintiff.

(73) **ASSIGNMENT OF ERRORS.**

Filed Sept. 15, 1936.

Now comes the Defendant, United States of America, and in connection with its Petition for an Appeal herein makes the following assignment of errors, which it states occurred upon the trial, and in the record and proceedings in this cause:

1. The Court erred, it is respectfully submitted, in overruling Defendant's motion for a directed verdict in its favor for the reason that Sec. 401 of the War Risk Insurance Act was repealed by the Economy Act of March 20, 1933, and, therefore, Plaintiff's cause of action was barred.

2. The Court erred, it is respectfully submitted, in overruling Defendants motion for a directed verdict in its favor for the reason that this suit was not brought within the time prescribed by law and, therefore, is barred

by the limitations contained within the Acts of Congress relative to War Risk and Automatic Insurance.

3. The Court erred, it is respectfully submitted, in overruling Defendant's motion for a directed verdict in its favor for the reason that there was not sufficient evi-
(74) dence upon which the jury might reasonably find that a common law marriage existed between the veteran and the mother of the minor Plaintiff.

4. The Court erred, it is respectfully submitted, in overruling Defendant's motion for a directed verdict in its favor for the reason that no Disagreement between the Plaintiff and the Defendant existed at the time of filing this suit, as required by the War Risk Insurance Act as amended, and, therefore, the Court had no jurisdiction to entertain this suit.

5. The Court erred, it is respectfully submitted, in excluding from evidence the letter dated July 9, 1918, from officials of the Defendant to Mrs. Agnes Jackson, Ridgeland, South Carolina, and the letter containing the reply of Agnes Jackson (which said letters are set out in full in the exhibits contained in the Bill of Exceptions), for the reason that the letters were not only competent evidence, but their contents were highly relevant to the issue submitted to the jury, the exclusion of which evidence was highly prejudicial to the Defendant's case.

6. The Court erred, it is respectfully submitted, in refusing Defendant's motion for a new trial, for the reason that the action of the Court in refusing said motion was based upon the erroneous holding that Sec. 401 of the War Risk Insurance Act was not repealed by the Economy Act of March 20, 1933.

7. The Court erred, it is respectfully submitted, in refusing Defendant's motion for a new trial, for the reason that the refusal of the said motion was based upon
(75) the following erroneous statement of the law:

"It may well follow then, that a man—and particularly an ignorant laborer such as Jackson was,—may not be conscious, in the absence of a marriage ceremony or

specific declarations recogniznig a state of marriage, that in the eye of the law he is a married man and father of a child recognized as legitimate under the inheritance statutes and otherwise.

"So was the jury informed as to the law, and their verdict settled the legal rights of the claimant, with ample support in law and fact."

WHEREFORE, for which errors and other errors apparent on the record, the Defendant prays that the said Judgment of the United States District Court for the Eastern District of South Carolina, dated July 3, 1936, be reversed and the same remanded, with directions to enter judgment for the Appellant, and for such other and further relief as may be proper in the premises.

CLAUD N. SAPP,
United States Attorney.
S. HENRY EDMUNDS, JR.,
Asst. U. S. Attorney.
Attorneys for the Defendant.

(76) **MEMORANDUM.**

Petition for and Allowance of Appeal, filed September 15, 1936.

Bond on Appeal (None).

Citation filed October 17, 1936.

Service accepted October 17, 1936.

STIPULATION FOR CLERK TO PREPARE TRANSCRIPT.

Filed October 17, 1936.

It is hereby stipulated and agreed that the Clerk of this Court shall make up a transcript of the record in the above-styled cause and transmit the same to the Clerk of the United States Circuit Court of Appeals for the Fourth Circuit, at Richmond, Va.; and that it be printed

under the supervision of the Clerk of that Court, in accordance with Rule 23.

R. K. WISE,
ANDERSON G. ULMER,
Counsel for Plaintiff.

CLAUD N. SAPP,
S. HENRY EDMUNDS, JR.,
Counsel for Defendant.

October 9th, 1936.

(77) **CLERK'S CERTIFICATE.**

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF SOUTH CAROLINA.
AT LAW.

I, RICHARD W. HUTSON, Clerk of the District Court of the United States for the Eastern District of South Carolina, hereby certify, that the foregoing is a true and correct copy of the record and proceedings in the case of Ben B. Jackson, by his Guardian *ad litem*, Alphene W. Dowell, plaintiff, *against* the United States of America, defendant, together with the Order of Judgment and all papers relating to the same, as appears by the original record now on file in my office.

Given under my hand and seal of said Court, at Charleston, S. C., this 17th day of October, 1936.

RICHARD W. HUTSON,
(Seal) C. D. C. U. S. E. Dist. S. C.

Richmond Press, Inc.,
Richmond, Va.
6-12-36—65
Contract No. J-12317.

PROCEEDINGS IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 4120

UNITED STATES OF AMERICA, APPELLANT

v.

BEN B. JACKSON, BY HIS GUARDIAN AD LITEM, ALPHENE W. DOWELL APPELLEE

Appeal from the District Court of the United States for the Eastern District of South Carolina, at Charleston

October 20, 1936, the transcript of record is filed and the cause docketed.

Same day, the original petition for appeal, order allowing appeal, and citation are certified up under section 7 of Rule 14.

Same day, the appearance of Claud N. Sapp, United States Attorney, is entered for appellant.

October 24, 1936, the appearance of S. Henry Edmunds, Jr., Assistant United States Attorney, is entered for the appellant.

November 18, 1936, twenty-five copies of the printed record are filed.

November 23, 1936, the appearance of Anderson G. Ulmer, R. K. Wise, and Warren E. Miller is entered for the appellee.

Affidavit of Alphene W. Dowell as to poverty

Filed November 25, 1936

[Style of Court and Title Omitted.]

STATE OF GEORGIA,
County of Chatham:

Alphene W. Dowell, being duly sworn according to law deposes and says: That he is the appellee in the above entitled action; that he is a citizen of the United States; and that he is unable to raise Twenty Five ($25.00) Dollars to cover the required deposit on account of Appellee's costs as required by Court due to the fact there is no money in this estate whatsoever. Deponent further states that on account of not having any funds in this estate he desires permission of the Court to be allowed to file typewritten copies of brief instead of printed copies.

ALPHENE W. DOWELL.

Sworn to and subscribed before me this 23rd day of November 1936.

(LS) [SEAL]

JOSEPHINE E. HOWARD,
Notary Public for Georgia.

My commission expires February 26, 1938.

Order allowing appellee to defend appeal in forma pauperis

Filed November 25, 1936

[Style of Court and Title Omitted.]

Upon the application of the Appellee, by his attorneys, R. K. Wise and Anderson G. Ulmer, and it appearing that the Appellee has filed an affidavit as to his poverty,

It is ordered that the Appellee be, and he is hereby, allowed to defend the appeal in this Court in the above entitled case in forma pauperis.

It is further ordered that the Appellee be, and he is hereby, permitted to file six typewritten copies of his brief instead of twenty printed copies, as required by the rules of this Court.

JOHN J. PARKER,
Senior Circuit Judge.

NOV. 25TH, 1936.

January 7, 1937, the appearance of Julius C. Martin, Director, Bureau of War Risk Litigation, is entered for the appellant.

January 18, 1937, the appearance of Young M. Smith, Attorney, Department of Justice, is entered for the appellant.

Argument of cause.

January 18, 1937 (January term, 1937), cause came on to be heard before Parker, Northcott, and Soper, Circuit Judges, and is argued by counsel and submitted.

Opinion filed April 6, 1937.

United States Circuit Court of Appeals, Fourth Circuit

No. 4120

UNITED STATES OF AMERICA, APPELLANT

v.

BEN B. JACKSON, BY HIS GUARDIAN AD LITEM, ALPHENE W. DOWELL, APPELLEE

Appeal from the District Court of the United States for the Eastern District of South Carolina, at Charleston. At Law

Argued January 18, 1937. Decided April 6, 1937

Young M. Smith, Attorney, Department of Justice, and S. Henry Edmunds, Jr., Assistant U. S. Attorney (Claud N. Sapp, U. S. Attorney; Julius C. Martin, Director, Bureau of War Risk Litigation, and Wilbur C. Pickett, Special Assistant to the Attorney General, on brief) for appellant, and R. K. Wise and Warren E. Miller (Anderson G. Ulmer and A. W. Dowell on brief), for appellee.

Soper, *Circuit Judge:* Ben B. Jackson, minor son and only child of a Negro veteran of the World War, brought suit through his guardian against the United States in the District Court for automatic insurance benefits of $25 per month under the terms of Section 401 of the War Risk Insurance Act as amended October 6, 1917, 40 Stat. 409. Jake Jackson, the soldier, was drafted into the Army on April 27, 1918, and died on May 11, 1918, without having applied for War Risk Insurance. Section 400 of the Statute provides for the granting to enlisted men of insurance from $1,000 to $10,000 against death or total disability upon the payment of certain premiums; and Section 401 provides that such insurance must be applied for within 120 days after enlistment, except that any person in the Government Service after April 6, 1917, who becomes totally and permanently disabled, or dies, before the expiration of 120 days without having applied for insurance "shall be deemed to have applied for and to have been granted insurance payable to such person during his life in monthly installations of $25 each"; and that in case of death before having received any such installment then $25 per month for not more than 240 months shall be paid to his wife from his death during widowhood, or to his child or children if any survive him. See also Section 19 of the Act of June 25, 1918, 40 Stat. 614, Section 12 of the Act of December 24, 1919, 41 Stat. 374, and Sections 600, 601, 602 of the World War Veterans' Act of June 7, 1924, 43 Stat. 629–630.

The action was instituted on October 14, 1935. The defenses were (1) that the statutory provision for automatic insurance was repealed by Section 17 of the Economy Act of March 20, 1933, 48 Stat. 11, 38 U. S. C. A. 717; and (2) that there was no substantial evidence of a marriage between the parents of the child and hence that the plaintiff had not satisfied the provisions of Section 22 of the War Risk Insurance Act, as amended, 41 Stat. 371, that the term "child" in the Act includes either a legitimate child, a child legally adopted, a stepchild in the man's household or an illegitimate child if acknowledged in writing by the father or if he has been judicially ordered to contribute to the child's support or judicially declared to be the putative father of the child. The District Judge ruled against the Government on both points and, the jury having considered the evidence bearing on the legitimacy of the child, found a verdict for the plaintiff.

The basic contention of the United States with regard to the first point is that the automatic insurance provided by the War Risk Insurance Act was a gratuitous death or disability allowance and not a contract. It is pointed out that the insured paid no premiums and received no written certificate or policy of insurance, and hence it is said that the provisions of the Act come within the scope of Section 17 of the Economy Act which repealed "all public laws granting medical or hospital treatment, domiciliary care, compensation, and other allowances, pensions, disability allowances or retirement pay to veterans and dependents of veterans of the World War."

Thus the case is distinguished from the decision in the case of Lynch vs. U. S., 292 U. S. 571, which held that a policy of renewable term insurance is a contract creating vested property rights, which Congress had no power to take away without compensation. Support for this position is found in Stevens v. U. S., 85 F. (2) 570, and in the unreported decision of the District Court of Nebraska in Luther H. Dill v. United States.

In our opinion, however, this position is not tenable because the intention of Congress to place automatic insurance in the same category as insurance for which application has been made seems to be clearly set out in the Act. Section 401 expressly provides that any person in the active service on or after April 6, 1917, who becomes totally and permanently disabled or dies within 120 days after the publication of the terms of the insurance contract without having applied for insurance "shall be deemed to have applied for and to have been granted insurance." This language occurs not only in Section 401 in the Act of October 6, 1917, 40 Stat. 409, and in Section 19 of the Act of June 25, 1918, 40 Stat. 614, but it remained as a part of the War Risk Insurance Act through all the amendatory legislation; and although the Act was repealed in principal part by Sections 600–601 of the World War Veterans Act of June 7, 1924, 43 Stat. 629, Section 602 of that Act provided that the repeal should not affect any act done or any right or liability accrued before the repeal, but all such rights and liabilities should continue and be enforced in the same manner as if the repeal had not been made.

It is obvious that Congress chose to consider the induction of the soldier into the service and his disability or death within 120 days thereafter as equivalent to an application for and a grant of insurance, so that a contract of insurance of equal validity to those for which application should be made would come into existence; and since Congress accepted the military service as the basis of the contract, it is of no moment that no written document was issued to the soldier or that no premium for the brief period of 120 days was required. None of the soldiers indeed made adequate money payment for the insurance granted, since the premiums paid were much below the approved standard in view of the risks involved. See Part II of Regulations and Porcedure, U. S. Veterans' Bureau, p. 1255, Bulletin No. 3, Active and Obsolete Issues as of December 31, 1928.

Heretofore the courts have proceeded on this assumption in sustaining the jurisdiction of the District Courts to entertain suits based on claims for automatic insurance. The right to bring an action against the United States was granted by the provision of Section 405 of the War Risk Insurance Act as amended on October 6, 1917, 40 Stat. 410, "that in the event of a disagreement as to a claim under the contract of insurance between the Bureau and any beneficiary or beneficiaries thereunder, an action may be brought against the United States." See also Sec. 13 of the Act of May 20, 1918, 40 Stat. 555, Section 19, of the Act of June 7, 1924, 43 Stat. 612. The

courts have held that automatic insurance is a contract within this language and that suit may be brought thereon against the United States in the Federal Courts. U. S. v. Carlson, 44 F. (2) 5, Caprio v. U. S., 45 F. (2) 520, Cunningham v. U. S., 67 F. (2) 714.

It may well be doubted that Congress had automatic insurance in mind when by Section 17 of the Economy Act it repealed all laws granting compensation, disability, and other allowances to veterans and dependents of veterans of the World War. The War Risk Insurance Act of October 6, 1917, was divided into articles, of which Article II referred solely to allotments and family allowances, Article III to compensation for death and disability, and Article IV to insurance, including automatic insurance; and it is reasonable to assume that Congress used these terms of the Economy Act in the sense in which they had become familiar to the Veterans' Bureau and to the public generally. And if it be supposed that the provision of the Economy Act which repealed all laws pertaining to yearly renewable insurance includes automatic insurance within its scope, we are met by the decision in Lynch vs. United States, supra, that this object was beyond the power of Congress to attain. We conclude that the Government's first defense in the pending case can not be sustained. We reached a similar result with regard to the lack of Congressional power to withdraw the privilege of applying unpaid compensation to the revival of a policy of insurance lapsed for nonpayment of premiums in U. S. v. Weaver, 86 F. (2) 372.

The remaining question is whether there was sufficient evidence of a common law marriage between the parents of the child to justify the submission of this issue to the jury. Both parents died shortly after the father's entry into military service. There was no evidence of a wedding ceremony, but there was evidence tending to show that the couple lived together as man and wife. For a term of five years before the war the man was working in a railroad gang who lived in cars at the scene of their labors during the week but generally returned to their homes at week ends. The father of the child spent practically all of his free time during these years at the home of the mother, which was situated a hundred yards or more from the house where he had previously lived with his sisters. No other man kept company with her during this period. Two children were born to the couple, a girl who lived only a few months, and a boy, the plaintiff, who was born eight months before the soldier was drafted. There was also evidence tending to show that the man supported the family, acknowledged the children as his own, and that the couple were known by general reputation in the community as man and wife.

On the other hand, doubt was thrown upon the character of the relationship between them by other evidence in the case. On at least one occasion the man, on returning to the settlement on Saturday evening, put his luggage in his sister's house and then went to the house of the mother of the child. The woman, although living openly with him, retained her maiden name, and she threatened to

force him to marry her when she was with child. When drafted the veteran claimed exemption because of dependent sisters and not because of a dependent wife and child. When he was taken to the hospital suffering with pneumonia he named a sister as his closest relative, and directed that she be notified if he should die.

Notwithstanding this conflict, there was enough evidence to submit the question of marriage to the jury. In Tedder vs. Tedder, 108 S. C. 271, the Supreme Court of South Carolina recognized the validity of a common law marriage in that state and held that the difference between marriage and concubinage, in circumstances such as these, rests in the intent of the cohabiting parties which may be evidenced by a public declaration or inferred from their actions. There was a substantial evidence in the pending case from which the intent of marriage might be inferred, and the issue was properly left to the decision of the jury. Furthermore, the plaintiff was entitled to the benefit of the provisions of Section 22 of the War Risk Insurance Act of October 6, 1917, 40 Stat. 401, whereby the provisions of R. S. Section 4075 (4705), 38 U. S. C. A. 198, were made applicable in the proof of marriages in compensation and insurance cases, with the result that a marriage is deemed to have existed under circumstances like those prevailing in this case without other evidence that the parties habitually recognized each other as man and wife and were so recognized by their neighbors, and lived together as such up to the date of enlistment.

Affirmed.

Judgment

Filed and Entered April 7, 1937

United States Circuit Court of Appeals, Fourth Circuit

No. 4120

UNITED STATES OF AMERICA, APPELLANT

vs.

BEN B. JACKSON, BY HIS GUARDIAN AD LITEM, ALPHENE W. DOWELL, APPELLEE

Appeal from the District Court of the United States for the Eastern District of South Carolina.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of South Carolina, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court, in this cause, be, and the same is hereby, affirmed.

MORRIS A. SOPER,
U. S. Circuit Judge.

APRIL 7, 1937.

On another day, to-wit, May 10, 1937, the mandate of this Court in this cause is issued and transmitted to the District Court of the United States for the Eastern District of South Carolina, at Charleston, in due form.

Same day, the original petition for appeal and order allowing appeal are returned to the Clerk of the District Court at Charleston, South Carolina.

Clerk's certificate

United States of America, Fourth Circuit, ss:

I, Claude M. Dean, Clerk of the United States Circuit Court of Appeals for the Fourth Circuit, do certify that the foregoing is a true copy of the entire record and proceedings in the therein entitled cause, as the same remain upon the records and files of the said Circuit Court of Appeals.

In testimony whereof, I hereto set my hand and affix the seal of the said United States Circuit Court of Appeals for the Fourth Circuit, at Asheville, North Carolina, this 28th day of June, A. D., 1937.

[SEAL]

CLAUDE M. DEAN,
Clerk, U. S. Circuit Court of Appeals,
Fourth Circuit.

U. S. GOVERNMENT PRINTING OFFICE: 1937

Order allowing certiorari

Filed October 11, 1937

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fourth Circuit is granted, limited to the first question presented by the petition.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice BLACK took no part in the consideration and decision of this application.